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ORIGINAL
FILED

MAY 26 2011

RICHARD M. BROWN
CLERK OF COURT
NORTHERN DISTRICT OF CALIFORNIA

RECEIVED

ADR

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

C11-02568

DMR

12 EUGENE E. FORTE; EILEEN FORTE;
13 GABRIELLE FORTE; JORDAN FORTE;
14 NOEL FORTE; JUSTON FORTE,

Case No.:

DEFENDANTS CITY OF PLEASANTON,
OFFICER JERRY NICELY, OFFICER
MARDENE LASHLEY, and OFFICER
MARTENS' NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. § 1441

(Alameda County Superior Court Case
No. RG11564165)

14 Plaintiff,
15 vs.
16 HYATT SUMMERFIELD SUITES
17 PLEASANTON; ANA AVILLA, individually
18 and as employee of HYATT
19 SUMMERFIELD SUITES PLEASANTON;
20 PLEASANTON POLICE DEPARTMENT;
21 OFFICER JERRY NICELY, individually
22 and in his official capacity; OFFICER
23 MARDENE LASHLEY, individually and in
24 her official capacity; OFFICER MARTENS,
25 individually and in his official capacity; and
26 DOES 1 through 25, inclusive,

Defendants.

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that Defendants CITY OF PLEASANTON (erroneously
sued as Pleasanton Police Department), OFFICER JERRY NICELY, OFFICER

DEFENDANTS CITY OF PLEASANTON, OFFICER JERRY NICELY, OFFICER MARDENE LASHLEY, and OFFICER MARTENS'
NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441

1 MARDENE LASHLEY, and OFFICER MARTENS (hereinafter "City Defendants") hereby
2 remove to this Court the state court action of *Eugene Forte; et al. v. Hyatt Summerfield*
3 *Suites; et al.*, Alameda County Superior Court Case No. RG11564165 pursuant to 28
4 U.S.C. §1441(b).

5 Specifically, removal is based on the following grounds:

6 1. On March 4, 2011, a Summons and Complaint was filed in the Superior
7 Court of the State of California, Alameda County, where this action is now pending as
8 *Eugene Forte; et al. v. Hyatt Summerfield Suites; et al.*, Alameda County Superior
9 Court Case No. RG11564165. A true and correct copy of the Summons, Complaint,
10 Notice of Case Management Conference and Order and Notice of Judicial Assignment
11 for All Purposes are attached hereto as Exhibit A.

12 2. Defendants were served with a copy of the Summons, Complaint, Notice
13 of Case Management Conference and Order and Alternative Dispute Resolution
14 Package on April 28, 2011. A copy of the proofs of service as to each City Defendant is
15 attached hereto as Exhibit B.

16 3. The City Defendants' answer was filed in Alameda County Superior Court
17 Case No. RG11564165 on May 24, 2011. A copy of Defendants' answer is attached
18 hereto as Exhibit C.

19 4. On May 19, 2011, counsel for plaintiffs file a Motion to Relieved as
20 Counsel. A copy of the motion and documents in support thereof are attached hereto
21 as Exhibit D.

22 5. The Complaint asserts causes of action against these removing defendants
23 for violations of the Fourth, Fifth and Fourteenth Amendments to United States
24 Constitution under 42 U.S.C. § 1983 (Compl. ¶¶ 52, 57). The Complaint also includes
25 state law claims.

26 6. This Court has original jurisdiction of this civil action pursuant to 28 U.S.C. §
27 1331 because Plaintiffs have alleged Constitutional violations arising under the laws of
28

1 the United States, namely a violation of Fourth, Fifth and Fourteenth Amendments to
2 the United States Constitution arising under 42 U.S.C. § 1983 (Compl. ¶¶ 52, 57).

3 7. This court has supplemental jurisdiction over Plaintiffs' state law claims
4 pursuant to 28 U.S.C. § 1337(a) because they arise from the same set of facts giving
5 rise to Plaintiffs' federal claims such that Plaintiffs' federal law and state law claims
6 "form part of the same case or controversy under Article III of the United States
7 Constitution." 28 U.S.C. § 1337(a)

8 8. Removal of this action to this Court is proper under 28 U.S.C. § 1441(b)
9 because removal is based on a claim arising under federal law, namely, Plaintiffs'
10 Fourth, Fifth and Fourteenth Amendments claims arising under 42 U.S.C. § 1983. See
11 *Rivet v. Regions Bank*, 522 U.S. 470, 475 (1998) ("[S]tate-court actions that originally
12 could have been filed in federal court may be removed to federal court by the defendant
13 . . . federal jurisdiction exists . . . when a federal question is presented on the face of the
14 plaintiff's properly pleaded complaint.").

15 9. Venue is proper in the United States District Court for the Northern District of
16 California because this action arises out of occurrences alleged to have taken place in
17 Alameda County, California. See 28 U.S.C. § 1331(b)

18 10. This Notice of Removal is hereby filed by City Defendants within thirty (30)
19 days after service of the Summons and Complaint.

20
21 Dated: May 26, 2011

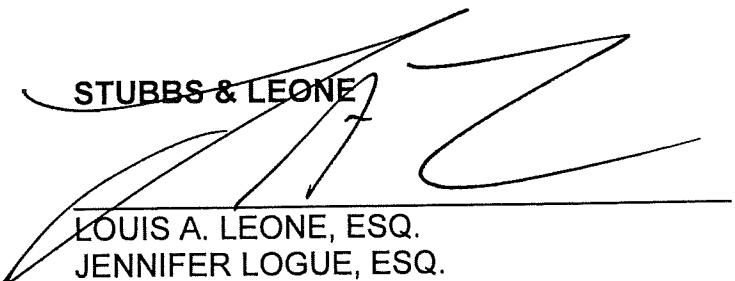
22 
23 STUBBS & LEONE
24 LOUIS A. LEONE, ESQ.
25 JENNIFER LOGUE, ESQ.
26 Attorney for Defendants
27 CITY OF PLEASANTON (erroneously sued
28 as Pleasant Police Department); OFFICER
JERRY NICELY; OFFICER MARDENE
LASHLEY; and OFFICER MARTENS.

EXHIBIT A

9294860
SUITE 100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

HYATT SUMMERFIELD SUITES PLEASANTON; ANA VILLA, individually and as employee of HYATT SUMMERFIELD SUITES PLEASANTON; (Additional Parties attachment form is attached)
YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

EUGENE E. FORTE; EILEEN FORTE; GABRIELLE FORTE; JORDAN FORTE; NOEL FORTE; JUSTON FORTE

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
ALAMEDA COUNTY

MAR 04 2011

CLERK OF THE SUPERIOR COURT
By *[Signature]* Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la Información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):
Alameda County Superior Court

1225 Fallon Street

Oakland, California 94612

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
William A. Lapcevic, Arata, Swingle, Sodhi & Van Egmond

P.O. Box 3287, Modesto, California 95353 P: (209)522-2211

CASE NUMBER:
(Número del Caso):*RG 91564165*

DATE:

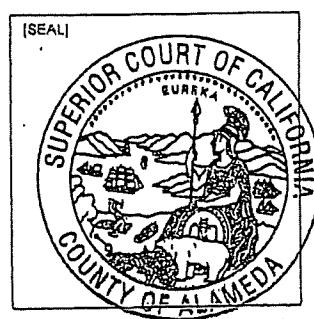
(Fecha) **MAR 04 2011** **Pat S. Sweeten**Clerk, by
(Secretario)*V. Hancett* Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación, use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
3. on behalf of (specify):
 under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):



SUM-200(A)

SHORT TITLE: Forte, et al. v. Hyatt Summerfield Suites Pleasanton, et al.	CASE NUMBER:
--	--------------

INSTRUCTIONS FOR USE

This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons. If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant

PLEASANTON POLICE DEPARTMENT; OFFICER JERRY NICELEY, individually and in his official capacity; OFFICER MARDENE LAS HLEY, individually and in her official capacity; OFFICER MARTENS, individually and in his official capacity, and DOES 1 through 25, inclusive

Page _____ of _____
Page 1 of 1



1 William A. Lapcevic, SBN 238893
2 ARATA, SWINGLE, SODHI & VAN EGMOND
3 A Professional Law Corporation
4 912 11th Street, First Floor (95354)
5 Post Office Box 3287
6 Modesto, California 95353
7 Telephone: (209) 522-2211
8 Facsimile: (209) 522-2980

9
10 Attorneys for Plaintiffs

11
12 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

13
14 EUGENE E. FORTE; EILEEN FORTE;
15 GABRIELLE FORTE; JORDAN FORTE;
16 NOEL FORTE; JUSTON FORTE,

17 Plaintiffs,

18 v.

19 HYATT SUMMERFIELD SUITES
20 PLEASANTON; ANA VILLA, individually
21 and as employee of HYATT SUMMERFIELD
22 SUITES PLEASANTON; PLEASANTON
23 POLICE DEPARTMENT; OFFICER JERRY
24 NICELEY, individually and in his official
25 capacity; OFFICER MARDENE LASHLEY,
inclusively and in her official capacity;
OFFICER MARTENS, individually and in his
official capacity; and DOES 1 through 25,
inclusive,

Defendants.

FILED
ALAMEDA COUNTY

MAR 04 2011

CLERK OF THE SUPERIOR COURT
By *[Signature]* Deputy

CASE NO.: *RG* 11564165

COMPLAINT FOR DAMAGES

[Unlimited Civil Jurisdiction – Damages
Exceed \$25,000]

BY FAX

21
22 Plaintiffs EUGENE E. FORTE, EILEEN FORTE, GABRIELLE FORTE, JORDAN
23 FORTE, NOEL FORTE, JUSTON FORTE, complain and for causes of action allege as follows:

24 GENERAL ALLEGATIONS

25 1. Plaintiffs, EUGENE E. FORTE, EILEEN FORTE, GABRIELLE FORTE,
26 JORDAN FORTE, NOEL FORTE, JUSTON FORTE, are residents of the City of Los Banos,
27 County of Merced, State of California.

28 Complaint

1 2. Plaintiffs are informed and believe and thereon allege that Defendant HYATT
2 SUMMERFIELD SUITES PLEASANTON (hereinafter referred to as "SUMMERFIELD SUITES")
3 is and at all times herein mentioned was a Corporation organized and existing under the laws of the
4 State of California and is located at 4545 Chabot Drive, Pleasanton, California 94588.

5 3. Plaintiffs are informed and believe and thereon allege that Defendant ANA VILLA
6 (hereinafter referred to as "VILLA") is and at all times herein mentioned was an employee of
7 Defendant SUMMERFIELD SUITES and was acting in the course and scope of her employment
8 with Defendant SUMMERFIELD SUITES. She is sued individually and in her official capacity.

9 4. Plaintiffs are informed and believe and thereon allege that PLEASANTON POLICE
10 DEPARTMENT (hereinafter "PPD") is a municipal corporation organized under the laws of the
11 State of California. It is responsible for the policies, procedures and practices implemented
12 through its various agents, departments and employees and for injury occurred thereby. It also was
13 the employer of Defendants Officers JERRY NICELEY, MARDENE LASHLEY and MARTENS at
14 all times relevant in this complaint.

15 5. Plaintiffs are informed and believe and thereon allege that Defendant OFFICER
16 JERRY NICELEY (hereinafter referred to as "NICELEY"), Badge No. 136, is and was at all times
17 relevant to this Complaint, a PPD Police Officer. He is responsible by law for enforcing the
18 regulations of the PPD and the State of California and the United States. He is sued individually
19 and in his official capacity.

20 6. Plaintiffs are informed and believe and thereon allege that Defendant MARDENE
21 LASHLEY, (hereinafter referred to as "LASHLEY"), Badge No. 187, is and was at all times
22 relevant to this Complaint, a PPD Police Officer. She is responsible by law for enforcing the
23 regulations of the PPD and the State of California and the United States. She is sued individually
24 and in her official capacity.

25 7. Plaintiffs are informed and believe and thereon allege that Defendant OFFICER
26 MARTENS (hereinafter referred to as "MARTENS") is and was at all times relevant to this
27 Complaint, a PPD Police Officer. He is responsible by law for enforcing the regulations of the
28 PPD and the State of California and the United States. He is sued individually and in her official

capacity.

8. All of the PPD Police Officer Defendants, and each of them, were acting under color of state law and pursuant to their respective authorities as police officers. All PPD Police Officer Defendants were engaged in ministerial duties and in carrying out those duties, all violated clearly established constitutional rights of which a reasonable person would have been aware.

6 9. The true names and capacities, whether individual, corporate, associate or otherwise
7 of the Defendants herein designated as DOES 1 through 25, inclusive, are unknown to Plaintiffs
8 who, therefore, sue said Defendants by such fictitious names. Plaintiffs allege that each named
9 Defendant herein designated as DOE is negligently, intentionally, recklessly, wantonly,
10 contractually or otherwise legally responsible for the events and happenings herein referred to and
11 proximately caused injury and damages thereby to Plaintiffs, as herein alleged. Plaintiffs will ask
12 leave of the Court to amend this Complaint to insert the true names and capacities of such
13 Defendants when same have been ascertained and will further ask leave to join said Defendants in
14 these proceedings. These DOE Defendants are sued in their individual and official capacities.

JURISDICTION

16 10. This Court has jurisdiction of this action because the alleged intentional and
17 negligent acts occurred in Pleasanton, California, which is within Alameda County.

11. On September 2, 2010, in compliance with Government Code Section 910 et seq.,
Plaintiff EUGENE E. FORTE filed a claim against the City of Pleasanton for damages based on
the events and allegations described herein (hereinafter "the Claim"). A true and correct copy of
the Claim is attached hereto as Exhibit "A" and is incorporated herein by reference.

22 12. The Claim was rejected in its entirety by City on October 15, 2010. A true and
23 correct copy of the City's letter rejecting the Claim is attached hereto as Exhibit "B" and is
24 incorporated herein by reference.

PRELIMINARY FACTUAL ALLEGATIONS

26 13. Plaintiff EUGENE FORTE's career is running a local government watchdog agency
27 which publishes the Badger Flats Times. Through his publicity, Plaintiff EUGENE FORTE has
28 effectively uncovered various cases of political corruption in the Los Banos community.

1 14. Shortly before the incident, Plaintiff EUGENE FORTE had uncovered and
2 published information which did not present an elected official of Los Banos in the best light. Due
3 to the small community of Los Banos and the allegation of corruption Plaintiff EUGENE FORTE
4 exposed, he received a death threat made by one of the students of a local high school, who was a
5 student and also friends of the elected official of Los Banos. Further Plaintiff EUGENE FORTE
6 and his family were subject to other inappropriate comments.

7 15. To get his family away from the tense situation in Los Banos, Plaintiff took his
8 wife, Plaintiff EILEEN FORTE, and his children, GABRIELLE FORTE, age 20, JORDAN
9 FORTE, age 17, NOEL FORTE, age 14, JUSTON FORTE, age 12, to Pleasanton for a long
10 weekend.

11 16. On or about March 6, 2010, Plaintiffs prepaid a hotel room for two nights and
12 checked into the Defendant SUMMERFIELD SUITES.

13 17. At or about 9:45 a.m., Plaintiff EUGENE FORTE attended the complimentary
14 breakfast in the cafeteria area of the SUMMERFIELD SUITES. While returning to his room,
15 Plaintiff EUGENE FORTE passed the front desk and placed a copy of his recent edition of the
16 Badger Flats Gazette on the front desk.

17 18. Upon returning to his room, Plaintiff EUGENE FORTE received a call from
18 Defendant VILLA. Defendant VILLA informed Plaintiff EUGENE FORTE that he and his family
19 must leave the premises immediately.

20 19. Having checked into the hotel for two prepaid nights and not having been given any
21 reason why he and his family were being forced to leave, Plaintiff EUGENE FORTE refused
22 Defendant VILLA's request. However, within five minutes, there was a knocking at the door on
23 which a "Do Not Disturb" sign was placed. The visitor turned out to be the Defendant VILLA who
24 stated through the door that Plaintiff EUGENE FORTE and his family had to leave immediately.

25 20. Plaintiff EUGENE FORTE informed Defendant VILLA that she should not disturb
26 his family, and if she was going to try and force them to leave the property, then he would call the
27 police. However, Defendant VILLA had taken it upon herself to bring Defendant Officers of the
28 PPD with her to the door. The Defendant PPD Officers informed Plaintiff EUGENE FORTE and

1 his family that "they must vacate the room because the manager did not want them there." The
2 PPD Officers went on to state that based on what the manager had read in the Badger Flats Gazette
3 articles, they feared Plaintiff's family might be in danger. At that time, Plaintiff EUGENE FORTE
4 opened the drapes, and his family members were standing right there and informed the officers
5 they were in no danger and to please leave them alone. However, instead of leaving the patrons of
6 the Summerfield Suites' room, the PPD Officers began to forcibly enter the Plaintiffs' room. As
7 the PPD Officers forced their way into the room, Plaintiff EUGENE FORTE suffered a minor
8 laceration to his hand as a PPD Officer attempted to cut the door's safety latch. Plaintiff EUGENE
9 FORTE repeatedly asked the PPD Officers to cease trying to force entry into the room and stated
10 that it was scaring his family.

11 21. Plaintiff EUGENE FORTE and his family were nervous, and his youngest daughter,
12 Plaintiff NOEL FORTE, was crying uncontrollably. Eventually, the PPD Officers agreed to
13 remove the jamming device from the door and further agreed not to try to make an entry into the
14 room. It was at that time that Plaintiff EUGENE FORTE told the PPD Officers that he and his
15 family would come outside and sit by the pool because his children were upset by the police
16 presence. Plaintiff EUGENE FORTE exited the room to the pool area with three of his children,
17 Plaintiffs GABRIELLE FORTE, JORDAN FORTE and JUSTON FORTE. EILEEN FORTE and
18 NOEL FORTE remained in the room.

19 22. While Plaintiff EUGENE FORTE talked with the PLEASANTON PPD Officers, he
20 heard EILEEN FORTE screaming back by the room. As he approached Plaintiff EILEEN FORTE
21 to see why she was screaming, one of the PPD Officers had removed his stun gun and had his other
22 hand on his service revolver. It turned out that EILEEN FORTE was upset that the officer had
23 closed the door while leaving their 14 year old daughter, NOEL FORTE, alone in the room, still
24 upset from the police presence. At this time, the PPD Officers began ruffling through EILEEN
25 FORTE's purse and going through their clothing.

26 23. Finally, based on the Defendant VILLA's statements to the PPD Officers, they
27 decided to send Plaintiff EUGENE FORTE for medical attention. Five PPD Officers forcibly
28 pushed Plaintiff EUGENE FORTE onto the ground and then forcibly handcuffed him to an

1 ambulance gurney and placed him in an ambulance. For a period of 45 minutes, he laid in the
2 ambulance handcuffed to a gurney, extremely stressed over what was happening to his family. All
3 of this occurred based on representations made by Defendant VILLA to members of the Defendant
4 PPD.

5 24. Based on the Defendant VILLA's statements false allegations to the PPD Officers,
6 PPD Officers wrongfully sent Plaintiff EUGENE FORTE for medical observation and treatment at
7 a local hospital. The treatment which was not requested and which Plaintiff EUGENE FORTE
8 declined had totaled the amount of \$35,500.65.

9 25. Plaintiff EUGENE FORTE had no insurance at the time, and the bill collectors are
10 calling as these outstanding amounts are over 90 days past due. Based on my experience in
11 medical billings, there will be interest assessed on the amounts outstanding.

12 FIRST CAUSE OF ACTION
13 (Wrongful Eviction against All Defendants)

14 26. Plaintiffs reallege and incorporate paragraphs 1 through 25 as if specifically alleged
15 herein.

16 27. Plaintiff and his family prepaid for two nights' stay at Defendant SUMMERFIELD
17 SUITES. Plaintiff arrived at the Defendants' premises and did not bring any contraband or engage in
18 any unlawful activity at any time during his stay.

19 28. Defendant VILLA and Officers of Defendant PPD forcibly removed Plaintiff and
20 threatened his family to leave the premises.

21 29. The actions of the Defendants constituted a wrongful eviction and were the actual and
22 proximate cause of Plaintiff's harm.

23 SECOND CAUSE OF ACTION
24 (False Arrest and False Imprisonment against All Defendants)

25 30. Plaintiffs reallege and incorporate paragraphs 1 through 29 as if specifically alleged
26 herein.

27 31. Plaintiff EUGENE FORTE was wrongfully arrested by Defendant PPD Police
28 Officers Jerry Nicely, Mardene Lashley, Office Martens and Does 1 through 25.

32. Defendant ANA VILLA intentionally caused Plaintiff EUGENE FORTE to be wrongfully arrested by falsely stating that he had been disturbing the guests.

33. Plaintiff EUGENE FORTE had not committed any crime for which to be arrested nor had he brought in contraband to the premises or solicited business from the occupants of the hotel.

34. Plaintiff EUGENE FORTE was harmed by such false arrest and false imprisonment by being humiliated in front of his family

35. All Defendants' conduct was a substantial factor in causing Plaintiff EUGENE FORTE's humiliation and medical expenses.

THIRD CAUSE OF ACTION
(Negligent Infliction of Emotional Distress against All Defendants)

36. Plaintiffs reallege and incorporate paragraphs 1 through 35 as if specifically alleged herein.

37 Defendants were negligent in their eviction and detention of Plaintiff and his family.

38. Plaintiff and his family have suffered emotional distress including suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame from Defendants negligent actions.

39. Defendants' negligence was a substantial factor in causing Plaintiffs' serious emotional distress.

FOURTH CAUSE OF ACTION
(Assault against All Defendants)

40. Plaintiffs reallege and incorporate paragraphs 1 through 39 as if specifically alleged herein.

41. All Defendants harmed Plaintiff EUGENE FORTE by intending to cause harmful and offensive contact on Plaintiff EUGENE FORTE.

42. After Plaintiff EUGENE FORTE was wrongfully removed from his room, he was surrounded by four armed PPD Officers and reasonably believed that he was about to be touched in a harmful and offensive manner.

1 43. Plaintiff EUGENE FORTE declined all recommendations by Defendants for
2 medical treatment.

3 44. This contact was offensive to a reasonable sense of personal dignity as he was
4 forced to the ground by Defendants in front of his family.

5 45. Plaintiff EUGENE FORTE was harmed and Defendants' conduct was a substantial
6 factor in causing Plaintiff EUGENE FORTE's harm.

FIFTH CAUSE OF ACTION
(Battery against All Defendants)

9 46. Plaintiffs reallege and incorporate paragraphs 1 through 45 as if specifically alleged
10 herein.

11 47. Defendant PPD Officers JERRY NICELY, MARDENE LASHLEY, MARTENS
12 harmed Plaintiff EUGENE FORTE by using excessive, unwarranted, and unnecessary force to
13 detain him.

14 48. Defendants intentionally caused Plaintiff EUGENE FORTE to be forced to the
15 ground and handcuffed to the gurney. Additionally, the Defendant PPD Officers cut Plaintiff's
16 hand while trying to forcibly entering his room.

17 49. Plaintiff did not consent to the use of that force and begged with the Defendant PPD
18 Officers to leave his family alone.

19 50. Plaintiff was harmed and the use of Defendant PPD Police Officers and DOES
20 Defendants' used of unreasonable force was a substantial factor in causing Plaintiff's harm.

21 51. Plaintiff EUGENE FORTE had not committed any crime. Plaintiff EUGENE
22 FORTE did not reasonably appear to pose an immediate threat to the safety of the PPD Police
23 Officers or others. Plaintiff EUGENE FORTE was not actively resisting arrest or attempting to
24 evade arrest.

27 | <img alt="Decor

28 |

SIXTH CAUSE OF ACTION

(Civil Rights Violations – 42 U.S.C. 1983 against Officer Jerry Nicely, Officer Mardene Lashley, Officer Martens and Pleasanton Police Department)

52. Plaintiffs reallege and incorporate paragraphs 1 through 51 as if specifically alleged herein.

5 53. At all times relevant herein, the conduct of Defendants PPD Police Officers and Does
6 25 through 35 were subject to 42 U.S.C. secs. 1983, 1985, 1986, and 1988.

7 54. Acting under the color of law, Defendants PPD Police Officers and Does 1 through 25
8 worked a denial of Plaintiff EUGENE FORTE's rights, privileges or immunities secured by the
9 United States Constitution or by Federal law, to wit,

- (a) by depriving Plaintiff EUGENE FORTE of his liberty without due process of law, by taking him into custody and holding him there against his will,
- (b) by conspiring for the purpose of impeding and hindering the due course of justice, with intent to deny Plaintiff EUGENE FORTE equal protection of laws,
- (c) by refusing or neglecting to prevent such deprivations and denials to plaintiff, thereby depriving plaintiff of his rights, privileges, and immunities as guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States.

18 55. Based on Defendants' actions, Plaintiff EUGENE FORTE was held against his will
19 and suffered including emotional distress including suffering, anguish, fright, horror, nervousness,
20 grief, anxiety, worry, shock, humiliation, and shame

SEVENTH CAUSE OF ACTION

(Violations of 42 U.S.C. 1983: Detention and Confinement against All Defendants)

23 56. Plaintiffs reallege and incorporate paragraphs 1 through 55 as if specifically alleged
24 herein.

25 57. As a result of their **concerted unlawful and malicious detention and confinement**
26 of Plaintiff EUGENE FORTE, Defendants PPD Police Officers deprived Plaintiff EUGENE FORTE
27 of both his right to his liberty without due process of law and his right to equal protection of the laws,
28 and the due course of justice was impeded, in violation of the Fifth and Fourteenth Amendments of

the Constitution of the United States and 42 U.S.C. sec. 1983.

EIGHTH CAUSE OF ACTION
(Refusing or Neglecting to Prevent against All Defendants)

58. Plaintiffs reallege and incorporate paragraphs 1 through 57 as if specifically alleged herein.

59. At all times relevant to this Complaint, Defendants PPD Police Officers were acting under the direction and control of Defendant PPD.

8 60. Acting under color of law and pursuant to official policy or custom, Defendants PPD
9 Police Officers knowingly, recklessly, or with gross negligence failed to instruct, supervise, control,
10 and discipline on a continuing basis Defendant police officers in their duties to refrain from:

- (a) unlawfully and maliciously harassing a citizen who was acting in accordance with his constitutional and statutory rights, privileges, and immunities,
- (b) unlawfully and maliciously arresting, imprisoning and prosecuting a citizen who was acting in accordance with his constitutional and statutory rights, privileges, and immunities,
- (c) conspiring to violate the rights, privileges, and immunities guaranteed to Plaintiff by the Constitution and laws of the United States and the laws of the Commonwealth of Massachusetts; and
- (d) otherwise depriving Plaintiff of his constitutional and statutory rights, privileges, and immunities.

21 61. Defendant PPD Officers had knowledge or, had they diligently exercised their duties to
22 instruct, supervise, control, and discipline on a continuing basis, should have had knowledge that the
23 wrongs conspired to be done, as heretofore alleged, were about to be committed. Defendants PPD
24 Police Officers had power to prevent or aid in preventing the commission of said wrongs, could have
25 done so by reasonable diligence, and knowingly, recklessly, or with gross negligence failed or refused
26 to do so.

27 62. Defendant PPD directly or indirectly, under color of law, approved or ratified the
28 unlawful, deliberate, malicious, reckless, and wanton conduct of Defendant police officers heretofore

1 described.

2 63. As a direct and proximate cause of the negligent and intentional acts of Defendants
3 PPD Police Officers and DOES 1 through 25 as set forth in paragraphs 1 through 62 above, Plaintiff
4 EUGENE FORTE suffered physical injury and severe mental anguish including but not limited to
5 emotional distress including suffering, anguish, fright, horror, nervousness, grief, anxiety, worry,
6 shock, humiliation, and shame in connection with the deprivation of his constitutional and statutory
7 rights guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States
8 and protected by 42 U.S.C. sec. 1983.

9 64. Defendant PPD is directly liable and responsible for the acts of DOE Officers because
10 they repeatedly and knowingly failed to enforce the laws of the State of California and the regulations
11 of the PPD pertaining to the search, arrest and detention of Plaintiff EUGENE FORTE, thereby
12 creating an atmosphere of lawlessness in which Defendants intentionally deprive their victims of
13 liberty without probable cause in the belief that such acts will be condoned and justified by their
14 superiors.

15 WHEREFORE, Plaintiffs' demand Judgment in their favor against HYATT SUMMERFIELD
16 SUITES PLEASANTON, ANA VILLA, OFFICER JERRY NICELEY, OFFICER MARDENE
17 LASHLEY, OFFICER MARTENS, PLEASANTON POLICE DEPARTMENT and DOES 1 through
18 25, inclusive, jointly and severally, as follows:

- 19 1. Compensatory damages in an amount to be proven at trial;
- 20 2. Costs and disbursements of this action, including attorneys fees;
- 21 3. Punitive damages against HYATT SUMMERFIELD SUITES PLEASANTON,
22 ANA VILLA, OFFICER JERRY NICELEY, OFFICER MARDENE LASHLEY,
23 OFFICER MARTENS, PLEASANTON POLICE DEPARTMENT and DOES 1
24 through 25, inclusive;

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26 |||||||

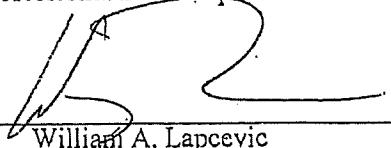
27 |||||||

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1 4. For such other and further relief as the Court may deem just and equitable.
2

3 DATED: March 4, 2011.

4 ARATA, SWINGLE, SODHI & VAN EGMOND
5 A Professional Law Corporation

6 By 

7 William A. Lapcevic
8 Attorneys for Plaintiffs

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EXHIBIT "A"

CLAIM PRESENTED TO THE CITY OF PLEASANTON

Please read the instructions on the back before completing.

ATTACHMENT TO CLAIM PRESENTED TO THE CITY OF PLEASANTON
Submitted by Eugene Forte

On the morning of March 6, 2010, the Pleasanton police department arrived at the hotel and attempted to break into Forte's prepaid hotel room in order to throw Forte out of his room at the request of the hotel. The police did not at any time tell Forte that he had done something against the law nor that he was doing something to break the law. The police stood outside the door for over an hour where they could see Forte's children through the window. They were told and shown by Forte's wife, upon their request, that Forte was not the danger to her or the children, but that the police were the ones upsetting everybody.

When the police could not jimmy the bolt on the hotel room door, they tricked Forte into thinking they were not going to force Forte to leave the hotel. Forte, in an effort to show his children that everything was alright, stated to the police that he was going to have his family sit by the pool in a semblance of normalcy (except his one daughter that was upset by the police standing outside the room for over an hour and who laying down in the inner bedroom).

When Forte and his family (except his one daughter) stepped out of the room, the police grabbed the door behind them and locked Forte and his family out of the hotel room for no valid reason. They knew Forte did not have his key with him and could not re-enter the room. They forcibly prevented Forte or his wife from re-entering their room under threat of being tasered. The police physically prevented Forte and his wife from knocking on the door and asking their daughter, who was still in the inner bedroom laying down, to open the door for them.

Instead, they entered Forte's hotel rooms without permission, woke up Forte's daughter and led her outside, then removed some personal possessions and put those possessions outside.

After standing around speaking with Forte peacefully for many minutes, one police officer told Forte it looked like Forte needed medical attention for the cut on his hand caused by the jimmy they had stuck through the door previously in trying to open the hotel door. Forte said no, he did not, then suddenly, several Pleasanton police officers jumped and assaulted Forte with no warning, pushing him to the ground and then strapping him against his will onto a guerney that had just arrived. He was handcuffed to the guerney and could not move.

At that time, Forte thought he was being arrested. The police told him that he was NOT being arrested but was being taken away for medical assistance, allegedly for the cut on his hand.

The paramedics took Forte's blood pressure and saw that it was escalated to over 190/130, yet, knowing such, kept the ambulance sitting in the parking lot for at least 45 minutes while they spoke to one of the police officers (the one that had the sunglasses on), endangering Forte's life.

After the paramedics rolled Forte away, Officer Nickleburgh and a large white, darkhaired woman officer threatened arrest of Forte's wife if Forte's wife and children did not leave the hotel room. Officers were standing uninvited in the hotel rooms and would not leave despite repeated requests.

After standing around for the 45 minutes, the paramedics then took Forte to the nearest hospital where he was admitted to the intensive care unit and kept for two days until Forte was out of danger from having a heart attack (he had had open heart surgery in 2004). Prior to release, a psychiatrist told Forte's wife that he needed to evaluate Forte to see if he was a danger to himself or his family. He then evaluated Forte and ruled that he was not.

The treatment of Forte by the police officers contributed significantly to emotional anxiety and stress suffered by Forte across the following weeks.

NAMES OF RESPONSIBLE PERSONS:

Sergeant Nickleburgh (?)

A large white woman, maybe 30-something, brown hair

Male officer with dark sunglasses was particularly offensive and mean, and was the one that stood outside the ambulance talking to the ambulance workers for 45 minutes.

Several other male officers' names not recalled at this time, although they can all be recognized from the photos and video recordings taken at the time of the incident.

EXHIBIT "B"

THE CITY OF



PLEASANTON

October 15, 2010

Gene Forte
1312 Sierra Creek Court
Patterson, CA 95363

Re: NOTICE OF REJECTION OF CLAIM

Dear Mr. Forte:

I am in receipt of your claim that you submitted on September 2, 2010, with the City of Pleasanton.

NOTICE IS HEREBY GIVEN that your claim has been rejected as of the date of this letter.

WARNING: Subject to certain exceptions, you have only six months from the date this notice was deposited in the mail to file a court action on this claim. See California Government Code Section 945.6. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Very truly yours,

Julie Harryman
Assistant City Attorney

c: George Hills Company

P. O. Box 520, Pleasanton, CA 94566-0802

City Manager
(925) 931-5002
Fax: 931-5482

City Attorney
(925) 931-5015
Fax: 931-5482

Economic Development
157 Main Street
(925) 931-5038
Fax: 931-5476

123 Main Street

City Clerk
(925) 931-5027
Fax: 931-5480

Arata, Swingle, Sodhi & Van Egmond
 Attn: Lapcevic, William A.
 912 11th Street
 First Floor (95354), Post Box 3287
 Modesto, CA 95353

Superior Court of California, County of Alameda

<p>Forte</p> <p style="text-align: center;">vs.</p> <p>Hyatt Summerfield Suites Pleasanton</p>	<p>Plaintiff/Petitioner(s)</p> <p>Defendant/Respondent(s) (Abbreviated Title)</p>
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No. RG11564165

**NOTICE OF CASE MANAGEMENT
CONFERENCE AND ORDER**

Unlimited Jurisdiction

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD.

Notice is given that a Case Management Conference has been scheduled as follows:

Date: 07/18/2011	Department: 22	Judge: Robert McGuiness
Time: 03:00 PM	Location: Administration Building Fourth Floor 1221 Oak Street, Oakland CA 94612	Clerk: Kathy McKean Clerk telephone: (510) 267-6938 E-mail: Dept.22@alameda.courts.ca.gov Fax: (510) 267-1574
	Internet: http://www.alameda.courts.ca.gov	

ORDERS

1. You must:
 - a. Serve all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint (CRC 3.110(b));
 - b. Give notice of this conference to any party not included in this notice and file proof of service;
 - c. Meet and confer, in person or by telephone, to consider each of the issues identified in CRC 3.724 no later than 30 calendar days before the date set for the Case Management Conference;
 - d. File and serve a completed Case Management Statement (use of Judicial Council Form CM-110 is mandatory) at least 15 days before the Case Management Conference (CRC 3.725)*
2. If you do not follow the orders above, you are hereby ordered to show cause why you should not be sanctioned under CRC 2.30. The hearing on the Order to Show Cause re: Sanctions will be at the same time as the Case Management Conference. Sanctions may include monetary sanctions and any other sanction permitted by law, including striking pleadings or dismissing the action.
3. You are further ordered to appear in person† (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.
4. The Direct Calendar Judge will issue orders at the conclusion of the conference that should include:
 - a. Referring to ADR and setting an ADR completion date
 - b. Dismissing or severing claims or parties
 - c. Setting a trial date.

* Case Management Statements may be filed by E-delivery, by emailing them to the following address: EDelivery@alameda.courts.ca.gov. No fee is charged for this service. For further information, go to Direct Calendar Departments at <http://apps.alameda.courts.ca.gov/domainweb>.

† Telephonic appearances at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties may make arrangements by calling 1-888-882-6878, or faxing a service request to 1-888-882-2946. This service is subject to charges by the vendor.

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice of Hearing by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 03/09/2011.

By

Digital

R. de Jear

Deputy Clerk

Superior Court of California, County of Alameda



***Notice of Assignment of Judge for All Purposes
Effective on December 27, 2010***

Case Number: RG11564165

Case Title: Forte VS Hyatt Summerfield Suites Pleasanton

Date of Filing: 03/04/2011

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Rule 3.734 of the California Rules of Court and Title 3 Chapter 2 of the Local Rules of the Superior Court of California, County of Alameda, this action is hereby assigned by the Presiding Judge for all purposes to:

Judge:	Robert McGuiness
Department:	22
Address:	Administration Building 1221 Oak Street Oakland CA 94612
Phone Number:	(510) 267-6938
Fax Number:	(510) 267-1574
Email Address:	Dept.22@alameda.courts.ca.gov

Under direct calendaring, this case is assigned to a single judge for all purposes including trial.

Please note: In this case, any challenge pursuant to Code of Civil Procedure section 170.6 must be exercised within the time period provided by law. (See Code Civ. Proc. §§ 170.6, subd. (a)(2) and 1013.)

IT IS THE DUTY OF EACH PLAINTIFF AND CROSS COMPLAINANT TO SERVE A COPY OF THIS NOTICE IN ACCORDANCE WITH LOCAL RULES.

General Procedures

All pleadings and other documents must be filed in the clerk's office at any court location except when the Court permits the lodging of material directly in the assigned department. All documents, with the exception of the original summons and the original civil complaint, shall have clearly typed on the face page of each document, under the case number, the following:

ASSIGNED FOR ALL PURPOSES TO
JUDGE Robert McGuiness

DEPARTMENT 22

All parties are expected to know and comply with the Local Rules of this Court, which are available on the Court's website at:

<http://www.alameda.courts.ca.gov/courts/rules/index.shtml> and with the California Rules of Court, which are available at www.courtinfo.ca.gov.

Parties must meet and confer to discuss the effective use of mediation or other alternative dispute processes (ADR) prior to the Initial Case Management Conference. The court encourages parties to file a "Stipulation to Attend ADR and Delay Initial Case Management Conference for 90 Days". Plaintiff received that form in the ADR information package at the time the complaint was filed. The court's Web site also contains this form and other ADR information. If the parties do not stipulate to attend ADR, the parties must be prepared to discuss referral to ADR at the Initial Case Management Conference.

(1) Counsel are expected to be familiar with the Statement of Professionalism and Civility, Alameda County Bar Association (www.acbanet.org). (2) Appearances by attorneys who are not counsel of record are not permitted except for good cause shown. Non-emergency scheduling conflicts is not good cause. (3) The court appreciates receiving courtesy copies of motions for summary judgment or adjudication, but otherwise, unless directed, counsel should refrain from lodging or emailing courtesy copies. (4) All references to "counsel" in this order apply equally to self-represented parties, who should know that there is a Self-Help Center at Rene C. Davidson Courthouse, room 109, 1225 Fallon Street, Oakland. (5) Email requests for motion dates preferred. Remember: Email is NOT a substitute for filing of pleadings/documents. (6) The court does provide an expedited informal discovery resolution procedure which MUST be followed before filing a discovery motion. Contact the clerk for details.

Schedule for Department 22

The following scheduling information is subject to change at any time, without notice. Please contact the department at the phone number or email address noted above if you have questions. Contacts with Dept. 22 should be by e-mail with copies to all counsel after conferring about proposed dates.

- Trials generally are held: Mondays through Thursdays, 8:30 a.m. to 1:30 p.m. with two breaks and Fridays, 8:30 a.m. to noon with one break. A pretrial conference is generally scheduled 3 weeks before trial at 2:00 p.m. on a Friday. Personal appearance required.
- Case Management Conferences are held: Mondays through Thursdays at 3:00 p.m. Timely filed and complete case management conference statements may obviate the need for in person conferences. Check the Register of Actions on Domain 2 days in advance. Further details listed below*
- Law and Motion matters are heard: Wednesdays and Thursdays at 3:00 p.m. (maximum 5 each). Email Dept. 22 to obtain a reservation. Limited hearings are available for summary judgments, preliminary injunctions and other time intensive motions.
- Settlement Conferences are heard: Court resources are limited. Counsel encouraged to consider alternative dispute resolution options. Conferences will be specially set when deemed appropriate.

- Ex Parte matters are heard: Applications are considered only on moving papers and any written response. Email Dept. 22 to advise when papers will be filed and give notice to other side and advise same that written opposition must be filed in 24 hours.
- *Parties shall check the Register of Action at least 2 days prior to the Case Management Conference for a tentative case management order. If published, the tentative case management order will become the order of the court unless counsel or self represented party notifies the court and opposing party by email, fax or telephone not less than one court day prior to the CMC that s/he intends to appear in person at the CMC to discuss some aspect of the order, and specifies the nature of the party's concern. The court's e-mail is Dept.22@alameda.courts.ca.gov.

Law and Motion Procedures

To obtain a hearing date for a Law and Motion or ex parte matter, parties must contact the department as follows:

- Motion Reservations
Email: Dept.22@alameda.courts.ca.gov
- Ex Parte Matters
Email: Dept.22@alameda.courts.ca.gov

Tentative Rulings

The court may issue tentative rulings in accordance with the Local Rules. Tentative rulings will become the Court's order unless contested in accordance with the Local Rules. Tentative rulings will be available at:

- Website: www.alameda.courts.ca.gov/domainweb, Calendar Information for Dept. 22
- Phone: 1-866-223-2244

Dated: 03/08/2011

John L. Flynn
facsimile

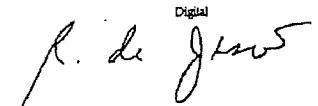
Presiding Judge,
Superior Court of California, County of Alameda

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown on the attached Notice of Initial Case Management Conference and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 03/09/2011

By



Digital

Deputy Clerk

EXHIBIT B

9391204

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William G. Lapcevic, 238893 Arata, Swingle, Sodhi & Van Egmond 912 11th Street/P.O. Box 1098 Modesto, CA 95353 TELEPHONE NO.: (209) 522-2211 FAX NO. (Optional): (209) 522-2980 E-MAIL ADDRESS (Optional): blapcevic@arata-law.com ATTORNEY FOR (Name): Plaintiffs		FOR COURT USE ONLY FILED ALAMEDA COUNTY MAY 10 2011 CLERK OF THE SUPERIOR COURT <i>Yann P. [Signature]</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1221 Oak Street MAILING ADDRESS: 1221 Oak Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME:		
PLAINTIFF/PETITIONER: Eugene E. Forte, et al. DEFENDANT/RESPONDENT: Hyatt Summerfield Suites Pleasanton, et al.		CASE NUMBER: RG11564165
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - summons
 - complaint
 - Alternative Dispute Resolution (ADR) package
 - Civil Case Cover Sheet (served in complex cases only)
 - cross-complaint
 - other (specify documents): Notice of Case Management Conference and Order and Blank Case Management Statement
3. a. Party served (specify name of party as shown on documents served):
Officer Martens, individually and in his official capacity
 - Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
Karen Gonzales (Deputy City Clerk)

BY FAX

4. Address where the party was served: 123 Main St. Pleasanton, Ca.
5. I served the party (check proper box)
 - by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 4/28/11 (2) at (time): 10:14 a.m.
 - by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or a declaration of mailing is attached.
 - I attach a declaration of diligence stating actions taken first to attempt personal service.

Page 1 of 2

PLAINTIFF/PETITIONER: Eugene Forte, et al.	CASE NUMBER: RG11564165
DEFENDANT/RESPONDENT: Hyatt Summerfield Suites, et al.	

5. c. by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

(1) on (date): (2) from (city):
 (3) with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)
 (4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

a. as an individual defendant, and in his official capacity
 b. as the person sued under the fictitious name of (specify):
 c. as occupant.
 d. On behalf of (specify):

under the following Code of Civil Procedure section:

<input type="checkbox"/> 416.10 (corporation)	<input type="checkbox"/> 415.95 (business organization, form unknown)
<input type="checkbox"/> 416.20 (defunct corporation)	<input type="checkbox"/> 416.60 (minor)
<input type="checkbox"/> 416.30 (joint stock company/association)	<input type="checkbox"/> 416.70 (ward or conservatee)
<input type="checkbox"/> 416.40 (association or partnership)	<input type="checkbox"/> 416.90 (authorized person)
<input type="checkbox"/> 416.50 (public entity)	<input type="checkbox"/> 415.46 (occupant)
	<input type="checkbox"/> other:

7. Person who served papers

a. Name: Mark Zurilgen, Valley Courier & Process Service

b. Address: P.O. Box 1324, Modesto, CA 95353

c. Telephone number: (209) 578-3020

d. The fee for service was: \$ 60.00

e. I am:

(1) not a registered California process server.
 (2) exempt from registration under Business and Professions Code section 22350(b).
 (3) a registered California process server:
 (i) owner employee independent contractor.
 (ii) Registration No.: 08-001
 (iii) County: Stanislaus

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date:

Mark Zurilgen

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

Me 38
(SIGNATURE)

9391204

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William J. Lapcevic, 238893 Arata, Swingle, Sodhi & Van Egmond 912 11th Street/P.O. Box 1098 Modesto, CA 95353 TELEPHONE NO.: (209) 522-2211 FAX NO. (Optional): (209) 522-2980 E-MAIL ADDRESS (Optional): blapcevic@arata-law.com ATTORNEY FOR (Name): Plaintiffs		FOR COURT USE ONLY FILED ALAMEDA COUNTY MAY 10 2011 <i>Yours Truly</i> CLERK OF THE SUPERIOR COURT
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1221 Oak Street MAILING ADDRESS: 1221 Oak Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME:		
PLAINTIFF/PETITIONER: Eugene E. Forte, et al. DEFENDANT/RESPONDENT: Hyatt Summerfield Suites Pleasanton, et al.		CASE NUMBER: RG11564165
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - summons
 - complaint
 - Alternative Dispute Resolution (ADR) package
 - Civil Case Cover Sheet (served in complex cases only)
 - cross-complaint
 - other (specify documents): Notice of Case Management Conference and Order and Blank Case Management Statement
3. a. Party served (specify name of party as shown on documents served):
Officer Martens, individually and in his official capacity

BY FAX

b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):

Karen Gonzales (Deputy City Clerk)

4. Address where the party was served: 123 Main St. Pleasanton, Ca.
5. I served the party (check proper box)
 - by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 4/28/11 (2) at (time): 10:14 a.m.
 - by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served, I informed him or her of the general nature of the papers.
 - (2) (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or a declaration of mailing is attached.
 - (5) I attach a declaration of diligence stating actions taken first to attempt personal service.

Page 1 of 2

PLAINTIFF/PETITIONER: Eugene Forte, et al.	CASE NUMBER: RG11564165
DEFENDANT/RESPONDENT: Hyatt Summerfield Suites, et al.	

5. c. by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

(1) on (date): from (city):

(3) with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)

(4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

a. as an individual defendant, and in his official capacity

b. as the person sued under the fictitious name of (specify):

c. as occupant.

d. On behalf of (specify):
under the following Code of Civil Procedure section:

<input type="checkbox"/> 416.10 (corporation)	<input type="checkbox"/> 415.95 (business organization, form unknown)
<input type="checkbox"/> 416.20 (defunct corporation)	<input type="checkbox"/> 416.60 (minor)
<input type="checkbox"/> 416.30 (joint stock company/association)	<input type="checkbox"/> 416.70 (ward or conservatee)
<input type="checkbox"/> 416.40 (association or partnership)	<input type="checkbox"/> 416.90 (authorized person)
<input type="checkbox"/> 416.50 (public entity)	<input type="checkbox"/> 416.46 (occupant)
	<input type="checkbox"/> other:

7. Person who served papers

a. Name: Mark Zurligen, Valley Courier & Process Service

b. Address: P.O. Box 1324, Modesto, CA 95353

c. Telephone number: (209) 578-3020

d. The fee for service was: \$ 60.00

e. I am:

(1) not a registered California process server.

(2) exempt from registration under Business and Professions Code section 22350(b).

(3) a registered California process server:
(i) owner employee independent contractor.
(ii) Registration No.: 08-001
(iii) County: Stanislaus

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date:

Mark Zurligen

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



(SIGNATURE)

9391220

FILED POS-010

FILED
ALAMEDA COUNTY

MAY 10 2011

CLERK OF THE SUPERIOR COURT
Yvonne Aluffi

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William A. Blapcevic, 238893 Arata, Swingle, Sodhi & Van Egmond 912 11th Street/P.O. Box 1098 Modesto, CA 95353 TELEPHONE NO.: (209) 522-2211 FAX NO. (Optional): (209) 522-2980 E-MAIL ADDRESS (Optional): blapcevic@arata-law.com ATTORNEY FOR (Name): Plaintiffs	FOR COURT USE ONLY MAY 10 2011 CLERK OF THE SUPERIOR COURT Yvonne Aluffi
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1221 Oak Street MAILING ADDRESS: 1221 Oak Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME:	
PLAINTIFF/PETITIONER: Eugene E. Forte, et al.	CASE NUMBER: RG11564165
DEFENDANT/RESPONDENT: Hyatt Summerfield Suites Pleasanton, et al.	Ref. No. or File No.:
PROOF OF SERVICE OF SUMMONS	

(Separate proof of service is required for each party served.)

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of:
 - summons
 - complaint
 - Alternative Dispute Resolution (ADR) package
 - Civil Case Cover Sheet (served in complex cases only)
 - cross-complaint
 - other (specify documents): Notice of Case Management Conference and Order and Blank Case Management Statement
- a. Party served (specify name of party as shown on documents served):
Officer Jerry Nicely, individually and in his official capacity
 - Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
Karen Gonzales (Deputy City Clerk)
- Address where the party was served: 123 Main St. Pleasanton, Ca.
- I served the party (check proper box)
 - by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 4/28/11 (2) at (time): 10:14a.m.
 - by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or a declaration of mailing is attached.
 - I attach a declaration of diligence stating actions taken first to attempt personal service.

Page 1 of 2

PLAINTIFF/PETITIONER: Eugene Forte, et al.	CASE NUMBER: RG11564165
DEFENDANT/RESPONDENT: Hyatt Summerfield Suites, et al.	

5. c. by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

(1) on (date): (2) from (city):

(3) with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)

(4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

a. as an individual defendant and in his official capacity
 b. as the person sued under the fictitious name of (specify):
 c. as occupant.
 d. On behalf of (specify):

under the following Code of Civil Procedure section:

<input type="checkbox"/> 416.10 (corporation)	<input type="checkbox"/> 415.95 (business organization, form unknown)
<input type="checkbox"/> 416.20 (defunct corporation)	<input type="checkbox"/> 416.60 (minor)
<input type="checkbox"/> 416.30 (joint stock company/association)	<input type="checkbox"/> 416.70 (ward or conservatee)
<input type="checkbox"/> 416.40 (association or partnership)	<input type="checkbox"/> 416.90 (authorized person)
<input type="checkbox"/> 416.50 (public entity)	<input type="checkbox"/> 415.46 (occupant)
	<input type="checkbox"/> other:

7. Person who served papers

a. Name: Mark Zurligen, Valley Courier & Process Service

b. Address: P.O. Box 1324, Modesto, CA 95353

c. Telephone number: (209) 578-3020

d. The fee for service was: \$.60.00

e. I am:

(1) not a registered California process server.
 (2) exempt from registration under Business and Professions Code section 22350(b).
 (3) a registered California process server:
 (i) owner employee independent contractor.
 (ii) Registration No.: 08-001
 (iii) County: Stanislaus

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

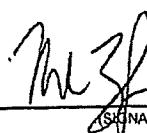
or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date:

Mark Zurligen

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)


(SIGNATURE)



POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William A. Lapcevic, 238893 Arata, Swingle, Sodhi & Van Egmond 912 11th Street/P.O. Box 1098 Modesto, CA 95353 TELEPHONE NO.: (209) 522-2211 FAX NO. (Optional): (209) 522-2980 E-MAIL ADDRESS (Optional): blapcevic@arata-law.com ATTORNEY FOR (Name): Plaintiffs		FILED FOR COURT USE ONLY ALAMEDA COUNTY MAY 10 2011 CLERK OF THE <i>Yeanie [Signature]</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1221 Oak Street MAILING ADDRESS: 1221 Oak Street CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME:		
PLAINTIFF/PETITIONER: Eugene E. Forte, et al. DEFENDANT/RESPONDENT: Hyatt Summerfield Suites Pleasanton, et al.		CASE NUMBER: RG11564165
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet (served in complex cases only)
 - e. cross-complaint
 - f. other (specify documents): Notice of Case Management Conference and Order and Blank Case Management Statement
3. a. Party served (specify name of party as shown on documents served):
Pleasanton Police Department

BY FAX

4. Address where the party was served: 123 Main St. Pleasanton, Ca.
5. I served the party (check proper box)
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 4/28/11 (2) at (time): 10:14 a.m.
 - b. by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):

- (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
- (2) (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
- (3) (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
- (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or a declaration of mailing is attached.
- (5) I attach a declaration of diligence stating actions taken first to attempt personal service.

Page 1 of 2

PLAINTIFF/PETITIONER: Eugene Forte, et al.	CASE NUMBER: RG11564165
DEFENDANT/RESPONDENT: Hyatt Summerfield Suites, et al.	

5. c. by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

(1) on (date): (2) from (city):

(3) with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)

(4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

a. as an individual defendant.

b. as the person sued under the fictitious name of (specify):

c. as occupant.

d. On behalf of (specify): **Pleasanton Police Department**
under the following Code of Civil Procedure section:

<input type="checkbox"/> 416.10 (corporation)	<input type="checkbox"/> 415.95 (business organization, form unknown)
<input type="checkbox"/> 416.20 (defunct corporation)	<input type="checkbox"/> 416.60 (minor)
<input type="checkbox"/> 416.30 (joint stock company/association)	<input type="checkbox"/> 416.70 (ward or conservatee)
<input type="checkbox"/> 416.40 (association or partnership)	<input type="checkbox"/> 416.90 (authorized person)
<input checked="" type="checkbox"/> 416.50 (public entity)	<input type="checkbox"/> 415.46 (occupant)
	<input type="checkbox"/> other:

7. Person who served papers

a. Name: Mark Zurilgen, Valley Courier & Process Service

b. Address: P.O. Box 1324, Modesto, CA 95353

c. Telephone number: (209) 578-3020

d. The fee for service was: \$ 60.00

e. I am:

(1) not a registered California process server.

(2) exempt from registration under Business and Professions Code section 22350(b).

(3) a registered California process server:

(i) owner employee independent contractor.

(ii) Registration No.: 08-001

(iii) County: Stanislaus

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date:

Mark Zurilgen

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



(SIGNATURE)

EXHIBIT C

1 LOUIS A. LEONE, ESQ. (SBN: 099874)
2 JENNIFER N. LOGUE, ESQ. (SBN: 241910)
3 **STUBBS & LEONE**
4 2175 N. California Blvd., Suite 900
5 Walnut Creek, CA 94596
6 Telephone: (925) 974-8600
7 Facsimile: (925) 974-8601

ENDORSED
FILED
ALAMEDA COUNTY

MAY 24 2011

8 Attorneys for Defendants
9 CITY OF PLEASANTON (erroneously sued
10 as Pleasanton Police Department); OFFICER
11 JERRY NICELY; OFFICER MARDENE LASHLEY;
12 and OFFICER MARTENS

CLERK OF THE SUPERIOR COURT
By R. De Jesus, Deputy

13 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

15 EUGENE E. FORTE; EILEEN FORTE;
16 GABRIELLE FORTE; JORDAN FORTE;
17 NOEL FORTE; JUSTON FORTE,

18 Plaintiff,
19 vs.

20 HYATT SUMMERFIELD SUITES
21 PLEASANTON; ANA AVILLA, individually
22 and as employee of HYATT
23 SUMMERFIELD SUITES PLEASANTON;
24 PLEASANTON POLICE DEPARTMENT;
25 OFFICER JERRY NICELY, individually
and in his official capacity; OFFICER
MARDENE LASHLEY, individually and in
her official capacity; OFFICER MARTENS,
individually and in his official capacity; and
DOES 1 through 25, inclusive,

Defendants.

Case No.: RG11564165

ANSWER OF DEFENDANTS CITY OF
PLEASANTON, OFFICER JERRY
NICELY, OFFICER MARDENE
LASHLEY, and OFFICER MARTENS TO
PLAINTIFFS' UNVERIFIED COMPLAINT
FOR DAMAGES

BY FAX

26 COMES NOW defendants, CITY OF PLEASANTON (erroneously sued as
27 Pleasanton Police Department), OFFICER JERRY NICELY, OFFICER MARDENE
28 LASHLEY, and OFFICER MARTENS TO PLAINTIFFS' UNVERIFIED COMPLAINT

ANSWER OF DEFENDANTS CITY OF PLEASANTON, OFFICER JERRY NICELY, OFFICE MARDENE LASHLEY, and OFFICER
MARTENS TO PLAINTIFFS' UNVERIFIED COMPLAINT FOR DAMAGES

1 for their answer to the unverified Complaint for damages of EUGENE E. FORTE,
2 EILEEN FORTE, GABRIELLE FORTE, JORDAN FORTE, NOEL FORTE, and JUSTON
3 FORTE, on file herein, admit, deny and allege as follows:

4 **GENERAL DENIAL**

5 Under the provisions of Section 431.30(d) of the California Code of Civil
6 Procedure, these answering defendants deny each and every, all and singular,
7 generally and specifically, the allegations contained in said Complaint, and further deny
8 that plaintiffs have been damaged in any sum or sums, or at all, by reason of any act or
9 omission on the part of these answering defendants.

10 **AFFIRMATIVE DEFENSES**

11 AS A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
12 PLAINTIFFS' UNVERIFIED COMPLAINT ON FILE HEREIN, these answering
13 Defendants allege that neither the Complaint nor any of the alleged causes of action
14 therein state facts sufficient to constitute a cause of action against these answering
15 Defendants.

16 AS A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
17 PLAINTIFFS' UNVERIFIED COMPLAINT ON FILE HEREIN, these answering
18 Defendants allege that said damages complained of, if any there were, were
19 proximately contributed to, caused or created by the carelessness, negligence, fault or
20 defects of other persons, corporations or business entities, unknown to these answering
21 Defendants at this time, and were not caused in any way by these answering
22 Defendants, or by persons for whom these answering Defendants are legally liable.

23 AS A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
24 PLAINTIFFS' UNVERIFIED COMPLAINT ON FILE HEREIN, these answering
25 Defendants allege that Plaintiffs were themselves, actively careless and negligent in
26 and about the matters alleged in the Complaint and that said acts of carelessness and
27 negligence on the Plaintiffs' own part, proximately contributed to the happening of the
28 incident and to the loss and damages, if any there were. Under the doctrine of Li vs.

1 Yellow Cab, Plaintiffs' contributory negligence shall reduce any and all damages
2 sustained by said Plaintiffs.

3 AS A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
4 PLAINTIFFS' UNVERIFIED COMPLAINT ON FILE HEREIN, these answering
5 Defendants allege that Plaintiffs failed to mitigate their alleged damages as required by
6 law.

7 AS A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
8 PLAINTIFFS' UNVERIFIED COMPLAINT ON FILE HEREIN, these answering
9 Defendants allege that at all times defendants' conduct was justified, reasonable, and
10 necessary so to dispatch their lawful obligations and duties.

11 AS A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
12 PLAINTIFFS' UNVERIFIED COMPLAINT ON FILE HEREIN, these answering
13 Defendants allege that they are immune from the allegations and causes of action
14 contained within the complaint based upon the absolute and qualified good faith
15 immunities available to them under Federal and State law.

16 AS A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
17 PLAINTIFFS' UNVERIFIED COMPLAINT ON FILE HEREIN, these answering
18 Defendants allege that at all times mentioned, they are immune from the allegations and
19 causes of action contained within the complaint based upon the immunities set forth in
20 Government Code Sections 815, 815.2, 818, 820.2, 820.4, 820.6, 821.2, 821.6, 821.8,
21 822.2, and 856.

22 AS AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
23 PLAINTIFFS' UNVERIFIED COMPLAINT ON FILE HEREIN, these answering
24 Defendants allege that at all times herein mentioned, they did not act maliciously,
25 willfully, or fraudulently so as to violate plaintiffs' constitutional rights.

26 AS A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO
27 PLAINTIFFS' UNVERIFIED COMPLAINT ON FILE HEREIN, these answering
28 Defendants allege that at all times herein mentioned, all the public employees acting on